APPENDIX

APPENDIX A

AFFIDAVIT OF HOWARD STOTLER

My name is Howard Stotler and I am a partner in Stotler & Company. My address is Room 1180 Board of Trade Building, Chicago, Illinois. My company is a cash grain merchandiser. Our function is to buy and sell grain. I am also President of the Cash Grain Association of the Chicago Board of Trade. That Association is composed of members and firms of the Chicago Board of Trade which participate in the Cash Grain Market of that Board of Trade. The membership includes all the major elevator companies, commission merchants and processors in the Chicago market.

Imposition of the grain inspection charge has been a financial burden to the farmers, an impediment to the cash grain merchandisers, corn processors and terminal elevator operators and has substantially limited the ability to market grain.

Irreparable Injury to the Farmers

Since the charge has been in effect, a period of about one year, the cost of the grain inspection charge has been borne by the farmers. This is illustrated by the representative invoice attached to this affidavit as Appendix A. As entered thereon, there was a charge of $17.32 for grain inspection by the railroads on that shipment and that charge was deducted in the settlement from the amount of money due to the farmer co-op, which is owned and operated by the farmers. This charge, amounting to

about one cent per bushel, has to be absorbed by the farmer, because the merchandisers, such as ourselves, work on a small total commission of less than one cent per bushel, and there is no way the inspection charge could be absorbed by us without leaving us with an out-of-pocket loss on our transactions.

The second way in which the farmer has been hurt and would be injured irreparably by a continuation of this charge is that it limits the market for his grain. When a farmer ships a car of grain to us through the country elevator operator, this enables him to gain the benefit of the bidders available on our Board of Trade, which comprises prospective buyers throughout the country and the world. However, while the inspection charge is in effect, this means that about one cent per bushel must be deducted from the price we merchandisers can bid to the farmer, as compared with a sale of the grain to the few large local elevators at Chicago. In other words, if the grain is forced by this charge to by-pass the inspection track and thereby also by-pass the merchandisers, going only directly to the few large local elevators at Chicago, the producer loses the benefit of the broad markets now available to him. In effect, the farmer is given the Hobson's choice of either selling it through us at a price which must reflect a discount of about one cent per bushel for the inspection charge or else selling it only to the terminal elevator owners without inspection charge. If there is no inspection charge, we are in a position to continue to offer about one cent more per bushel to the farmer than if the inspection charge is imposed by the railroads.

I understand that the railroads may suggest that the charge be kept in the tariffs during an appeal to the Supreme Court with some type of refund provision if they

are unsuccessful before that Court. This would not repair the injury, however. From the farmer's standpoint, he must sell the grain on a given day and time at the best bid available, as presented to him. Thus, while the charge is in effect, our bid is one cent lower and the farmer must take, in many instances, the bids of the terminal elevators. In other words, while the charge is in effect, the farmer will not make many sales to us which could otherwise have been made at a higher price to him if the charge had not been in the tariff. There would be no refund on the many cars which would move without inspection (but which would have moved with inspection if there were no charge) during the period of the prospective court appeal; and the economic loss would be to the farmer because during this time he would be forced to accept somewhat lower bids from the terminal operators. The inspection charge, in effect, closes an avenue of commerce and serves as a barrier to the inspection and marketing system.

Injury to Merchandisers and Marketing Network

As indicated above, this affidavit is on behalf of my company, a merchandiser, as well as on behalf of our association of merchandisers. During the past year, while the inspection charge has been in effect, the volume of business for our members has been down approximately 40%, as a direct result of the inspection charge. Since we must substract the one cent per bushel inspection charge from our bids to the sellers, this charge has resulted in a deterioration of our competitive position and due to the sharp diminution of our total volume, many of our members have been continuing in this cash grain business at a loss. If the charge were restored in the tariffs for several months or more pending an appeal to the Supreme

Court, it is likely that several of our members would have to go out of this business during this time. Many of us have elected to remain in business only with the hope and expectation that the charge would be cancelled. However, the restoration of the charge would place a financial strain upon us as a group, and, I believe, a strain which individual members could not endure for another few months. The existence of this charge for the period of one year it has been in effect has had a very damaging effect upon the grain marketing system. Only last month, 26 of the men employed as grain inspectors at Chicago were discharged because of the lack of business due to the barrier in the form of a charge which the railroads have placed against inspections. These men are of modest means and must immediately seek reemployment in other fields. Also, the responsibility for inspecting cars has recently been transferred to a new organization at Chicago. However, this new organization was only prevailed upon to take over this function because the inspection charge had been cancelled by this Court. If the charge is allowed to be restored pending an appeal to the Supreme Court, it is likely that this new company would be unable to see its way clear to take over the inspection function. What I have tried to make plain here is that the mere existence of this inspection charge, whether lawful or not, for a continuing period of time has been destroying the very fabric of the marketing system whereby inspection is necessary. Any further period of time during which the charge might be in effect would lead to a more complete destruction of this basic marketing system during a period when the validity and, hence, the permanency of the inspection charge has, as yet, not been established. The railroads, by keeping this charge in effect

for a sufficiently long period of time can succeed in substantially destroying the marketing system for grain which uses inspection and has been in existence for over 40 years, regardless of whether or not they ultimately prevail in this case. We do not feel it would be just to allow the railroads to liquidate this system during the time that it takes to litigate the validity of a charge which we believe and this Court has held to be invalid. We are speaking here for small business which cannot withstand the continuation of this charge. On the other hand, the railroads have lived without an inspection charge and with the grain marketing system for over 40 years and there is no likelihood of any permanent injury to them if the charge continues to be suspended during any further appeal which they may elect to take.

I solemnly declare that I have examined the foregoing document and that the statements of fact contained therein are true.

Howard Stotler
Howard Stotler

Subscribed and sworn to before me
this 16th day of June, 1972.

Harold E. Spencer
Notary Public

My commission expires August 15, 1974

APPENDIX B

COMPARISON OF ORIGIN GRADES WITH DESTINATION GRADES ON CARS OF CORN PURCHASED ON ORIGIN GRADES BY CARGILL IN 1969

Grade	Number of cars as graded at origin	Number of cars as graded at destination
No. 1 Yellow	66	8
No. 2 Yellow	402	112
No. 3 Yellow	272	225
No. 4 Yellow	185	264
No. 5 Yellow	37	144
Sample Grade	4	144

Source: Ex. 129; R. 1418-1420.

APPENDIX C

COMPARISON OF DOCKET 17000 RATES AS ORIGINALLY PRESCRIBED WITH CURRENT LEVEL RATES

Rates to Minneapolis, Minn.

(Cents per cwt.)

From:	As Prescribed	As Incr. to Time of Hearing	Percent of Increase
Watertown, S. D.	15	38	153
Mitchell, S. D.	19	47	147
Mankato, Minn.	10	25	150
Worthington, Minn.	15	37	147
Algona, Iowa	14	37	164
Cedar Rapids, Iowa	16.5	40	142
Carroll, Iowa	17	42	147

Source: Exhibit 14, Schedule 4.